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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/732,737	12/10/2003	Frank Joseph Feuerborn	GYTR / 17	6676
26875	7590	10/06/2006	EXAMINER	
WOOD, HERRON & EVANS, LLP 2700 CAREW TOWER 441 VINE STREET CINCINNATI, OH 45202			CHARLES, MARCUS	
			ART UNIT	PAPER NUMBER
			3682	

DATE MAILED: 10/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/732,737	FEUERBORN, FRANK JOSEPH	
	Examiner	Art Unit	
	Marcus Charles	3682	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 July 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This action is responsive to the response filed 7/25/2006, which has been entered.

Claims 1-5 are currently pending.

Drawings

1. The examiner has accepted the drawing filed in this application.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-2 are rejected under 35 U.S.C. 102(b) as being anticipated by Hitchcock et al. (4,840,607). Hitchcock et al. discloses a multiple rib V-belt comprising a belt body (12') formed in a continuous loop (fig. 1); a plurality of v-shaped grooves (48) formed in the belt body and spaced apart to define a plurality of circumferentially extending ribs (46). It is apparent that the belt body is formed to standard dimension for a given pulley having an overall thickness and groove depth. Hitchcock et al. also teaches reducing the depth of the groove from a standard dimension by reducing the tip (46) to a flat surface (54) in order to prevent cracks due to backward bending (col. 4).

In claim 2, note Hitchcock et al. disclose the tips (46) are truncated (col. 4, lines 20-65).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 3-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hitchcock et al. In claims 3-4, Hitchcock et al. disclose the claimed invention except for the approximate groove depth and the approximate amount by which the groove depth is reduced, and the overall approximate thickness of the belt body in combination with the rib. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the groove height and the thickness of Hitchcock et al. so that they fall within the required height and thickness, since it has been held that where the general condition of the claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233. In addition, the required height and depth are subject to and related to a particular pulley groove and the application thereof.

6. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hitchcock et al. in view of Hull (6,647,278). Hitchcock et al. does not disclose the belt is defined by cogs along the ribs. It is well known in the art for a belt to be defined by cogs along the length of the ribs in order to increase flexibility when the belt is wrapped around the pulley. Hull clearly discloses a belt having a plurality of longitudinally extended ribs (25)

and each rib defined by spaced cogs (28) along the longitudinal length in order to improve belt life. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the belt of Hitchcock et al. so as to include cogs in view of Hull to increase flexibility when the belt is wrapped around the pulley, improve belt life and prevent cracking.

Response to Arguments

7. Applicant's arguments filed 7-25-2006 have been fully considered but they are not persuasive. Applicant contended that Hitchcock is directed to a conventional standard V-belt section and not a v-belt that has been further modified by varying the dimensions for a standard V-belt section. It noted that the method of forming the belt is not germane to the issue of patentability of the device itself. Therefore, the limitation relating to how the belt is formed has not been given patentable weight.

In addition, "[E]ven though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." *In re Thorpe*, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985).

"The Patent Office bears a lesser burden of proof in making out a case of prima facie obviousness for product-by-process claims because of their peculiar nature" than when a product is claimed in the conventional fashion. *In re Fessmann*, 489 F.2d 742, 744, 180 USPQ 324, 326 (CCPA 1974). Once the examiner provides a rationale tending


to show that the claimed product appears to be the same or similar to that of the prior art, although produced by a different process, the burden shifts to applicant to come forward with evidence establishing an unobvious difference between the claimed product and the prior art product. In re Marosi, 710 F.2d 798, 802, 218 USPQ 289, 292 (Fed. Cir. 1983). Therefore, for reasons given above the rejection is proper.

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marcus Charles whose telephone number is (571) 272-7101. The examiner can normally be reached on Monday-Thursday 7:30 am to 6:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ridley Richard can be reached on (571) 272-6917. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.


MARCUS CHARLES
PRIMARY EXAMINER
September 30, 2006
AU 3682